



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning & Development
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**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2502039
Applicant Name: Barry Burgess
Address of Proposal: 2331 Fairview Av E (Houseboat #L2) (KCA #176)

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to establish use for future placement/installation of a 2-story, 1, 635 sq. ft. floating home including the float structure. The project includes demolition and removal of an existing floating home. (Houseboat Space #L2, KCA #176).

The following Master Use Permit components are required:

Shoreline Substantial Development Permit - for the future construction of a floating home in an Urban Residential (UR) Shoreline Environment. - (SMC 23.60.540)

SEPA - Environmental Determination - (SMC 25.05)

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or,
involving another agency with jurisdiction.*

BACKGROUND DATA

Existing Conditions

The subject site is located on Lake Union in an Urban Residential (UR) shoreline environment. The float area for the existing floating home is approximately 1,240 sq. ft. The zoning designation of the site is Single Family (SF5000). The subject floating home moorage has 32 existing houseboats. The subject floating home moorage is nonconforming.

Area Development

The proposal site is part of an existing group of 32 floating homes situated on both sides of two docks that make up the Tenas Chuck Moorage Cooperative. The subject floating home is located in space #L and is located on the south side of the northernmost dock 4 houseboats in from the shore land. The subject floating home moorage is bounded on all sides by other floating homes. Over water development surrounding the subject site in Lake Union consists of floating home moorages, boat moorages and other water related uses. Other development in this area consists of water-related residential uses.

Proposal

The applicant proposes to replace an existing one-story floating home with a new two-story floating home with total water coverage of 1,240 square feet. The new float area will be approximately 29 feet, three inches by 42 feet, two inches. The existing float area is also 1,240 square feet. The height of the proposed new floating home above the ordinary high water mark is 18 feet. The maximum height requirement is 18 feet for nonconforming floating homes. The footprint of the new floating home structure will be the same size as the existing floating home structure.

Public Comment

No comments were received during the comment period which ended on May 27, 2005.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: A substantial development permit shall be issued only when the development proposed is consistent with:

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local

governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of SMC, Section 23.60.064 require that the proposed use(s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The policies support and encourage the establishment of water dependent uses. Floating homes, because of their historic role in Seattle, are designated as a water dependent use, but the increase of floating home moorages or the increase in use of the shoreline or water area by floating homes, however, is not necessarily encouraged. The intent is to recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and preventing the displacement of water dependent commercial and manufacturing uses by floating homes. Areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. The proposal site is located in an area designated as Urban Residential, the purpose of which is to protect residential areas in a manner consistent with the Single family and Multi-family Residential Area Policies. Therefore, the proposed project would conform to the policies of the comprehensive plan and would be consistent with the purpose of the UR designation.

Development Standards

The proposal to install a new two-story 1635 sq. ft. floating home on a new 1240 sq. ft. float to replace the existing floating home (Houseboat #L) is permitted outright in SMC 23.60.540 governing the UR shoreline environment. The proposed action is therefore subject to:

1. *the general development standards for all shoreline environments (SSMP 23.60.152);*
2. *the development standards for uses in the UR environment (SSMP 23.60.540);*
3. *the development standards for nonconforming floating homes (SSMP 23.60.196); as well as*
4. *the development standards for Single Family zones (SMC 23.44).*

1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

These general standards apply to all development and uses in all shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices

for the specific use or activity. These measures are required to prevent degradation of land or water. The general development standards state, in part, that all shoreline development and uses must: 1) not release oil, chemicals or other hazardous materials onto or into the water; 2) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 3) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and 4) be located, constructed, and operated so as not to be a hazard to public health and safety. Construction materials, such as wood used in the aquatic environment poses a risk of introducing toxins into the environment through the leaching of chemicals used to preserve the material. Common chemicals used to preserve wood are copper, zinc, and arsenic. In high levels copper can negatively impact aquatic organisms. Additionally, an inherent risk that exists when humans live over the water is the potential for debris and other deleterious material to enter the aquatic environment. Therefore to ensure conformance with these general development standards, no treated wood shall be allowed in decking material, if treated wood is used in other structural elements of the floating home this treated wood shall meet or exceed the Western Wood Preservers Standards for use of treated wood in the aquatic environment and best management practices shall be required of the owners living in the new houseboat that prevent debris and other deleterious material from entering the water. Additionally, the applicant and owner shall be required to notify contractors and subcontractors of these requirements.

2. Development Standards for UR Shoreline Environments (SSMP 23.60.570)

The development standards set forth in the Urban Residential Shoreline Environment relate to height, lot coverage, view corridors and public access. The subject site, however, is non-conforming and therefore subject to the development standards set forth in the specific floating home standards for non-conforming structures as described below:

Development Standards for Non-conforming Floating Home Moorages (SSMP 23.60.196)

There are two sets of development standards for floating homes; conforming and non-conforming moorages. The subject moorage is non-conforming. The remodeling, replacement, or rebuilding of a non-conforming floating home moorage is permitted subject to the provisions set forth in SMC 23.60.196 C. The floating home moorage is located on privately-owned premises (SMC 23.60.196 A2). The existing views of the water from other moorage tenants will not be blocked (SMC 23.60.196.A3). This floating home moorage site is considered pre-existing for the purposes of the Seattle Shoreline Master Program because it has an assigned King County Assessor's (KCA) number (KCA #176). The KCA established it as a pre-existing use at the established moorage in Lake Union as of the effective date of Chapter (SMC 23.60.196.A4). A moorage plan was submitted with this application and is on file with the Department of Planning and Development (SMC 23.60.196 A6).

Nonconforming Floating Home Requirements:

	Code Provision	Required	Existing	Proposed
Float Area	23.60.196.C1.a	Float area shall not be increased.	1,240.36 sq. ft	1,239.86 sq. ft.
Height	23.60.196.C1.b	18 feet max height from water level	Conforms to requirement	18 feet from ordinary high water level

	Code Provision	Required	Existing	Proposed
Setback	23.60.196.C1.c	6 feet min distance between subject home and adjacent walls	Home to the east = 9'-4" Home to the west = 3'-9"	Home to the east = 9'-4" Home to the west = 6'-10"
Setback	23.60.196.C1.d	3 feet min. distance between subject wall and site line	This houseboat is approx. 9" from the nearest site lines.	This houseboat is approx. 3' from nearest site lines.
Open Water	23.60.196.C1.e	No part of home may be further extended over water, beyond float edge.	No portion of the proposed structure extends beyond float edge.	No portion of the proposed structure extends beyond float edge.
Accessory Float	23.60.196.C1.f	none	none	none
View Corridor	23.60.196.C1.g	Cannot increase view corridor non-conformity	Does not increase view corridor of non-conforming float.	Will not increase view corridor of non-conforming float.

This proposal is to remove the existing floating home and float, and to replace it with a new 1,635 sq. ft. floating home (Houseboat) over a new 1,240 sq. ft. float. This will not increase the area of the floating moorage, thereby not increasing the overall coverage for the moorage dock. No additional over water coverage is proposed for this floating home and no part of the floating home will be extended further over water beyond the size of the existing float. The total height of the floating home will be 18 feet which is the maximum height allowed from the water's surface. All of the proposed setbacks from the adjacent walls and floats satisfy the standards for the non-conforming floating home structures.

The proposed project is consistent with the development standards for non-conforming structures in the UR shoreline environment and does not increase the extent of non-conformity. Therefore, the proposed project is consistent with the standards for the UR shoreline environment.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC, sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

Summary

In conclusion, minimal additional adverse impacts to the lake bed or water quality are expected, and the proposed removal of the existing floating home and the replacement of the new two-story floating home (Houseboat #L2) at this moorage site, will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated March 24, 2005. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states in part: *“where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,”* subject to some limitations. Under such limitations/circumstances (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Bulk and Scale

The total height of the new floating home, 18 feet, will be the maximum allowed from the water surface. There is adequate separation between the floating home and the floating homes to the north, south, east and west, so solar access to those sites will not be obstructed. The appearance of bulk of the floating home will be reduced by design elements incorporated into the structure. There are a number of existing floating homes in the vicinity of a similar size and scale as the proposal. For these reasons, the proposed floating home at space #L (KCA #176) will not be out of scale with other floating homes in the vicinity, and no adverse impacts are expected related to bulk and scale.

Aquatic Habitat

No disturbance of the lake bed sediments is expected since all work will be done on land and the new floating home will be floated into place. There is potential for debris to enter the water during the process of floating the houseboat to the designate location, so construction best management practices (BMPs) will have to be taken to prevent this from occurring.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).

- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

SEPA AND SHORELINE CONDITIONS

The following conditions to be enforced during construction and for the life of the project shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

The owner(s) and/or responsible party(s) shall:

Prior to Issuance of a Construction Permit

1. Notify in writing all contractors and sub-contractors of the general requirements of the Shoreline Master Program (SSMP 23.60.152), and shall be subject to the following:
 - a) The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards, and regulations of water quality management programs and regulatory agencies.
 - b) Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include on the plans a written description of the BMPs that will be used during the proposed work.
 - c) No treated wood shall be used in any decking material.
 - d) If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
 - e) Prior to commencing construction, an emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site. A sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan.

During Construction

2. In order to further mitigate the noise impacts during demolition and construction, the owner(s) and/or responsible party(s) shall limit the hours of demolition and construction to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shells of the structure are enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner

3. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
4. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
5. No treated wood shall be used in the decking material.
6. If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
7. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.

For the Life of the Project

8. Standard best management practices (BMPs) (such as minimizing or eliminating the use of material toxic to the aquatic environment and using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

Signature: _____ (signature on file) Date: January 30, 2006
Lisa Rutzick, Land Use Planner
Department of Planning and Development
Land Use Services

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